Supreme Court, U.S.
FILED
SEP 25 1987
JOSEPH F. SPANIOL, JR.
CLERK

No. 87-331

IN THE
Supreme Court of the United States
OCTOBER TERM, 1987

MICHAEL K. DEAVER,
Petitioner,
v.
CABLE NEWS NETWORK, INC., *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

---

BRIEF IN OPPOSITION OF RESPONDENTS CABLE NEWS NETWORK, INC., CAPITAL CITIES/ABC, INC., CBS INC., AND NATIONAL BROADCASTING COMPANY, INC.

Of Counsel:

STEVEN KORN
Cable News Network, Inc.
One CNN Center
Box 105366
Atlanta, GA 30348-5366

STEVEN SADICARIO
Capital Cities/ABC, Inc.
1330 Avenue of the Americas
New York, NY 10019

HOWARD JAECKEL
CBS Inc.
51 West 52 Street
New York, NY 10019

ROBERTA BRACKMAN
National Broadcasting Company, Inc.
30 Rockefeller Plaza
New York, NY 10012

TIMOTHY B. DYK
Counsel of Record
MICHAEL STEVENSON
WILMER, CUTLER & PICKERING
2445 M Street, N.W.
Washington, D.C. 20037
(202) 663-6000

Counsel for Respondents Cable News Network, Inc., Capital Cities/ABC, Inc., CBS Inc., and National Broadcasting Company, Inc.

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

QUESTION PRESENTED

Whether the Court of Appeals correctly held that the closure of *voir dire* to the press and public in the circumstances of this case violated the First Amendment as interpreted by this Court in *Press-Enterprise Co. v. Superior Court of California*, 464 U.S. 501 (1984).

PARTIES TO THE PROCEEDING IN THE COURT BELOW

The parties to the proceeding in the court of appeals were:

Michael K. Deaver
(Petitioner)

The United States of America

The Washington Post Company
The New York Times Company
(Respondents not participating in this brief)

Cable News Network, Inc.
Capital Cities/ABC, Inc.
CBS Inc.
National Broadcasting Company, Inc.
(Respondents participating in this brief)[1]

---

[1] The following is a list of all publicly-owned parents, subsidiaries and affiliates of Cable News Network, Inc.; Capital Cities/ABC Inc.; CBS Inc.; and National Broadcasting Company, Inc., that, to the knowledge of counsel, have any outstanding securities in the hands of the public. In light of the purposes of Supreme Court Rule 28.1, we construe the terms "parent companies," "subsidiaries," and "affiliates" to mean those corporations (1) whose shares are publicly traded; (2) in the case of "parent companies," which own a majority of the shares of a party; and (3) in the case of "subsidiaries and affiliates," a majority of whose shares are owned by a party or a parent of a party.

1. *Cable News Network, Inc.*—Cable News Network, Inc. is the wholly-owned subsidiary of Turner Broadcasting System, Inc.

2. *Capital Cities/ABC, Inc.*—Capital Cities/ABC, Inc. has no parent companies, subsidiaries or affiliates so defined.

3. *CBS Inc.*—CBS Inc. has no parent companies, subsidiaries or affiliates so defined.

4. *National Broadcasting Company, Inc.*—National Broadcasting Company, Inc., is a wholly-owned subsidiary of General Electric Company, a publicly-owned corporation. The following subsidiaries of General Electric Company have securities that are publicly owned: General Electric Credit Corporation, Canadian General Electric Company, Ltd., General Electric Overseas Capital Corporation, and RCA Corporation.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
PARTIES TO THE PROCEEDING IN THE COURT BELOW	ii
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	iv
CONSTITUTIONAL PROVISION INVOLVED	1
STATEMENT	2
ARGUMENT	6
Certiorari Should Be Denied Because the Court of Appeals Correctly Applied Clear, Recent Decisions of This Court, and There Is No Conflict Among the Circuits	6
A. The Court of Appeals Properly Applied the *Press-Enterprise* Standards	6
B. There Is No Conflict Among the Circuits	11
CONCLUSION	13

TABLE OF AUTHORITIES

CASES: Page

Globe Newspaper Co. v. Superior Court, 457 U.S. 596 (1982) ---------- 6, 7, 9, 10, 11
In re Greensboro News Co., 727 F.2d 1320 (4th Cir. 1984) ---------- 11, 12
Press-Enterprise Co. v. Superior Court of California, 464 U.S. 501 (1984) ---------- *passim*
Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555 (1980) ---------- 6, 7
United States v. Edwards, 823 F.2d 111 (5th Cir. 1987) ---------- 11
United States v. Peters, 754 F.2d 753 (7th Cir. 1985) ---------- 12

CONSTITUTIONAL PROVISION:

U.S. Const., Amend. I ---------- *passim*

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

No. 87-331

MICHAEL K. DEAVER,

Petitioner,

v.

CABLE NEWS NETWORK, INC., *et al.*,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

---

BRIEF IN OPPOSITION OF RESPONDENTS CABLE NEWS NETWORK, INC., CAPITAL CITIES/ABC, INC., CBS INC., AND NATIONAL BROADCASTING COMPANY, INC.

CONSTITUTIONAL PROVISION INVOLVED

This case involves the First Amendment to the Constitution of the United States, which provides in pertinent part:

> Congress shall make no law . . . abridging the freedom of speech, or of the press . . . .

STATEMENT

On March 18, 1987, petitioner Michael K. Deaver was indicted by a federal grand jury on perjury charges. *Voir dire* examination of prospective jurors was set to begin on Monday, July 13, 1987. As part of the *voir dire*, the prospective jurors were to complete a questionnaire that consisted of 37 questions, ranging from questions that did not implicate any privacy concerns (*e.g.*, "Have you, or has any relative or close friend, ever held an elected or appointed office in state, federal, or local government?") to questions which may have raised privacy concerns for some people (*e.g.*, "Have you, or has any relative or close friend, ever been addicted to any drug?"). (Petitioner's Appendix J, at 83a-96a).

On Friday, July 10, 1987, the district court *sua sponte* ordered that the individual *voir dire* questioning of prospective jurors be conducted in chambers or in the jury room. (*See* Appendix A to this brief, at 1a.) The court further ordered that the transcripts of those proceedings and the prospective jurors' completed questionnaires not be released except by order of the court after the completion of the trial. (*Id.*)

On July 13, 1987, jury selection began. On that date, at the request of one of the respondents, the court modified its order of July 10 to allow the questionnaires and the transcript to be publicly released at the close of the day's proceedings, except to the extent a particular juror objected. (Petitioner's Appendix F, at 29a-34a.) During the course of the first day's *voir dire* proceedings, only "a very miniscule portion of the total record [was] sealed at the request of the jurors," estimated to be less than "one percent" of the total record. (Petitioner's Appendix I, at 79a). The court, however, continued to close the individual jurors' *voir dire* to the press and public because it believed that some of the jurors might not wish to be examined publicly with respect to some of the matters covered in the questionnaire. (Petitioner's

Appendix F, at 29a-34a, Petitioner's Appendix G, at 37a.)

On Tuesday, July 14, 1987, at a hearing in open court commencing at 9:30 a.m., respondents objected to the closure, urged that it was inconsistent with the requirements of this Court's decision in *Press-Enterprise Co. v. Superior Court of California*, 464 U.S. 501 (1984), and requested that the court conduct the *voir dire* proceedings in open court. In response, the court seemed to indicate that it intended to close the proceedings only as to a juror who raised objections and only as to that portion which the court determined to be sensitive and the juror believed to be sensitive. (Petitioner's Appendix G, at 41a.) In practice, the court followed a different approach.

At approximately 10:00 a.m., the court addressed *en masse* a panel of approximately thirty prospective jurors and informed them that it had "been asked by the news media" to conduct the *voir dire* in open court. (Petitioner's Appendix H, at 57a.) It stated that in response it was presenting the jurors with the choice between being examined privately or publicly (*id.* at 57a-61a), explaining to the panel members that it was leaving the matter "largely to your discretion." (*Id.* at 58a.) The court asked that those who wished to be examined privately express that preference by remaining seated and silent. Those who were willing to be examined publicly were asked to stand, give their names to the marshal, and proceed back to the jury lounge to wait until all the private examinations were completed. (*Id.*)

When the court had finished giving those instructions, the prospective jurors, through the marshal, asked the court to repeat them. (*Id.* at 59a.) Upon hearing the same instructions again, only five of the approximately thirty members of the panel gave their names to the marshal and left for the jury lounge. (*Id.* at 61a.) In

other words, twenty-five of the thirty panel members passively elected private examination, in contrast to the "miniscule" number that had voiced privacy concerns on the previous day. Of the five who chose public examination, one or more subsequently changed their minds and took advantage of the court's offer of private examination. (*See* Appendix B to this brief, at 3a.)

Respondents objected to the court's modified approach on the ground that it placed a burden on jurors to elect public examination and because the court left the matter to the jurors' discretion and did not individually assess the privacy interests of those jurors who passively opted for private examination. Respondents proposed less restrictive alternatives to the court's procedure.[1] The court rejected respondents' position:

> It is not possible for me to exercise discretion in any objective fashion as to what is or is not to be private . . . . What is sensitive, personal information for each of these respective jury members is a matter which is entirely within their own hearts. . . . *I have to trust to their judgment* in deciding whether or not they can, consistent with their own wishes to remain private people, reveal the information that they are being asked to reveal."

(Petitioner's Appendix I, at 73a-74a (emphasis added).) Because the court did not wish "to place a burden on anyone to have to articulate" reasons for choosing private rather than public examination, (Petitioner's Appendix I, at 74a) it asked no questions of any individual juror regarding privacy concerns and made no finding that any particular juror had a specific concern that merited private *voir dire*. The court indicated that it

---

[1] For example, respondents suggested that the court could distribute to the jurors a questionnaire on which they could indicate if they had a preference for private questioning and, if so, what their reasons were, thereby allowing the court to assess those reasons. (Petitioner's Appendix I, at 65a; *see also id.* at 68a.)

would follow the same procedure throughout the *voir dire* process, stating that it intended "to place the onus, if you will, on those jurors who will be willing to, in public, to depart the courtroom and let those who truly wish to remain silent and private about matters that they wish to remain private to stand mute." (Peitioner's Appendix I, at 73a, 76a-78a.)

Respondents immediately appealed, seeking summary reversal on the ground that the court had failed to comply with the clear requirements of this Court's *Press-Enterprise* decision. That afternoon, the court of appeals issued an order directing petitioner and the United States to show cause, by 10:00 a.m. the following morning, why the district court's procedure should not be overturned. The next morning, July 15, 1987, a panel of the Court of Appeals for the District of Columbia Circuit (Judges Starr and Silberman and Senior Judge McGowan) heard oral argument. That afternoon, the court unanimously ruled that the merits of respondents' argument were "so clear that summary reversal is appropriate." (Petitioner's Appendix A, at 8a.)

The court held that the district court's procedure failed to meet the conditions for closure set out in this Court's decision in *Press-Enterprise Co. v. Superior Court of California*, 464 U.S. 501 (1984), and ordered the district court to conduct further *voir dire* proceedings in open court except to the extent that a particular juror made an "affirmative request" for closure and the court made a specific finding that, with respect to that juror, there was "a valid basis for a belief that disclosure infringes a significant interest in privacy." (Petitioner's Appendix A, at 12a-13a (quoting *Press-Enterprise*, 464 U.S. at 512).)

On July 16, 1987, the district court, rather than continue with *voir dire* in accordance with the court of appeals decision, dismissed the entire panel and tentatively

rescheduled the proceedings to begin anew on October 19, 1987, in order to give petitioner the opportunity to seek certiorari.[2] (*See* Petition at 17 & n.3.) On August 11, 1987, the court of appeals panel that decided the case denied petitions for rehearing filed by petitioner and the United States. (Petitioner's Appendix C, at 19a.) On that same date, the court of appeals denied petitioner's and the United States' suggestions for rehearing *en banc*, with "no member of the Court request[ing] the taking of a vote thereon." (Petitioner's Appendix D, at 21a.) This petition followed.

ARGUMENT

CERTIORARI SHOULD BE DENIED BECAUSE THE COURT OF APPEALS CORRECTLY APPLIED CLEAR, RECENT DECISIONS OF THIS COURT, AND THERE IS NO CONFLICT AMONG THE CIRCUITS

A. The Court of Appeals Properly Applied the *Press-Enterprise* Standards

This Court should deny the petition for certiorari. In reversing the district court, the court of appeals did no more than follow this Court's decision in *Press-Enterprise Co. v. Superior Court of California*, 464 U.S. 501 (1984). The ruling sought by petitioner would not only alter the present practice of open *voir dire* in district courts throughout the United States, it would have the effect of overruling this Court's decision in *Press-Enterprise*.

This Court has established that the First Amendment guarantees to the public and the press a right of access to criminal trials. *See, e.g., Globe Newspaper Co. v. Superior Court*, 457 U.S. 596 (1982); *Richmond News-*

---

[2] Respondents did not request, and the court of appeals did not order, that the district court disregard the *voir dire* it had already conducted and begin again. The district court did so *sua sponte*.

papers, Inc. v. Virginia, 448 U.S. 555 (1980). Because "a presumption of openness inheres in the very nature of a criminal trial under our system of justice," *Richmond Newspapers*, 448 U.S. at 573, access to criminal trials may be denied only upon a showing that "the denial is necessitated by a compelling governmental interest, and is narrowly tailored to serve that interest." *See Globe*, 457 U.S. at 606-07.

In *Press-Enterprise*, this Court ruled that the First Amendment right of access to trials included a right of access to *voir dire* proceedings. The trial court in *Press-Enterprise* had closed the *voir dire* in a rape/murder trial on the ground that the presence of the press would diminish the likelihood that prospective jurors would be candid, and refused to release transcripts of the *voir dire* after the trial on the ground that the persons questioned during *voir dire* had a general interest in privacy. 464 U.S. at 503-504.

This Court held that neither the trial court's candor concerns nor its privacy concerns was sufficient to justify closed *voir dire*. Emphasizing the historic importance of openness in our criminal justice system, and relying on *Richmond Newspapers* and *Globe*, the Court held that the "presumption of openness may be overcome only by an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest." 464 U.S. at 510. For example, the Court noted that if a prospective juror in a rape case had herself been a rape victim, the embarrassment and trauma of the incident might understandably give rise to legitimate privacy concerns regarding *voir dire* examination. *Id.* at 512.

The Court made clear, however, that protection of the privacy interests of potential jurors is accomplished by informing the jurors that if they believe a legitimate privacy interest is likely to be infringed, they may "request an opportunity to present the problem to the judge

in camera but with counsel present and on the record." *Id.* The Court emphasized the respective roles of the judge and the prospective juror stating that "[b]y requiring the prospective juror to make an affirmative request, the trial judge can ensure that there is in fact a valid basis for a belief that disclosure infringes a significant interest in privacy." *Id.*

Under the district court's procedure in the present case, however, the only panel members required to make any affirmative request were those who wanted to be publicly examined. Those jurors had to stand up, leave the group, identify themselves to the marshal, and return to the jury lounge. Significantly, the prospective jurors knew that opting for public examination meant that their examination would come last, after the private examinations. (*See* Petitioner's Appendix H, at 58a.) The effect of these built-in disincentives to openness is reflected in the jurors' overwhelming acceptance of the district court's offer of closed examination, as compared with the "miniscule" number of privacy concerns expressed previously, when jurors were required to request affirmatively the sealing of any part of the transcript. (Petitioner's Appendix I, at 79a.)

The court of appeals aptly observed that the district court's procedure, rather than providing a valid basis for believing that a significant privacy interest was at stake, actually encouraged "closure based on possibly insignificant privacy interests." (Petitioner's Appendix A, at 13a.) The court of appeals correctly held that the district court was obligated to require that the prospective jurors themselves make an affirmative request for *in camera voir dire*. (Petitioner's Appendix A, at 12a-13a.)

This Court also made clear in *Press-Enterprise* that, even when the juror affirmatively seeks private examination, it is the obligation of the trial judge to ensure that only genuinely sensitive information is suppressed. 464

U.S. at 512-13. The juror's particular privacy interest must in each case "be balanced against the historic values we have discussed and the need for openness of the process." 464 U.S. at 512.[3]

That obligation was not fulfilled here. The district court expressly refused "to place a burden on anyone to have to articulate" reasons for choosing closed examination (Petitioner's Appendix I, at 74a) and, consequently, made no effort to balance any juror's perceived privacy interest against "historic values" and "the need for openness." Rather, the district court simply assumed that some of the prospective jurors might have legitimate privacy interests and left it to their "discretion" to decide on public or private examination. (Petitioner's Appendix H, at 58a.) The court of appeals correctly held that the district court's approach did not satisfy the *Press-Enterprise* requirement that the court make findings "that public interrogation of any individual member of the *voir dire* would 'touch[] on deeply personal matters that [the juror] has legitimate reasons for keeping out of the public domain.'" (Petitioner's Appendix A, at 9a (quoting *Press-Enterprise*, 464 U.S. at 511.).)

---

[3] This requirement of individualized consideration of closure questions was consistent with and grounded in the Court's earlier decision in *Globe*, striking down a Massachusetts statute that required the exclusion of the press and public from the courtroom whenever, during trials for specified sexual offenses, a minor victim of a sexual assault testified. In *Globe*, the state tried to justify the blanket closure rule on the ground that the rule would encourage minor sex victims to come forward and testify willingly and accurately. 457 U.S. at 609. While acknowledging that the state's interest in protecting the psychological well-being of such minors was compelling, this Court held that even that interest did not justify a mandatory blanket closure rule. *Id.* at 607-08. Rather, the Court ruled that trial judges must consider various factors—including whether the witness requested closure—and determine, on a case-by-case basis, whether a particular witness's testimony should be closed to the public. *Id.*

Finally, *Press-Enterprise* mandated that no *voir dire* proceeding be closed without first considering alternatives to closure. The court of appeals faulted the district court for its failure to consider any alternatives to closure—including the obvious alternative, contemplated in *Press-Enterprise*, of conducting *voir dire* in open court and responding to a juror's individual privacy concerns when raised by the juror. (Petitioner's Appendix A, at 13a-14a.)[4]

Petitioner argues that the provision of transcripts was a reasonable alternative designed to accommodate First Amendment rights. (Petition at 25-28.) In *Press-Enterprise*, however, this Court made clear that the provision of a transcript does not relieve the trial court of its obligation to conduct open proceedings. 464 U.S. at 512. It is only if the *Press-Enterprise* standards for closure have been met that the question of a transcript even arises. *Id.*

That rule is also confirmed by this Court's decision in *Globe*. The statute at issue in *Globe* allowed for the availability of transcripts of the closed proceedings, but that did not render closure of the proceedings constitutionally permissible. *Globe*, 457 U.S. at 610-11. The *Press-Enterprise* and *Globe* decisions reflect the principle that a transcript is not an adequate substitute for direct observation of proceedings in open court. Not only does a transcript not reflect the demeanor of the court, counsel and the witnesses, but, also, transcripts are not immediately available, and, when prepared on short notice, often contain substantial typographical errors. They are also expensive, costing hundreds of dollars per day.

---

[4] Petitioner contends that the court of appeals ignored *Press-Enterprise*'s concern with the right to a fair trial. (Petition at 23-25.) In fact, concern about juror candor is an inherent part of the *Press-Enterprise* standard. And, as we have shown, the court of appeals properly applied each aspect of the *Press-Enterprise* test.

In any event, as this Court noted in *Globe*, the routine release of transcripts "hardly advances [the] interest" in keeping private matters secret. 457 U.S. at 610. That observation is particularly apt in this case, where the apparent overwhelming willingness of the prospective jurors to have the transcripts publicly released only further undermines the notion that they had any compelling privacy concerns to begin with.

B. There Is No Conflict Among the Circuits

Each of the two cases cited by petitioner as conflicting with the decision below is clearly distinguishable, and neither can be read to suggest that *Press-Enterprise* would not apply to a situation such as is presented here.

In *United States v. Edwards*, 823 F.2d 111 (5th Cir. 1987), a case involving the highly publicized bribery and racketeering trial of the governor of Louisiana, the district court closed midtrial chambers conferences with jurors who were alleged to have discussed the possibility of accepting bribes. An earlier trial had ended in a mistrial amidst similar allegations. *See Edwards*, 823 F.2d at 113. The court of appeals affirmed, concluding that *Press-Enterprise* did not apply because the conferences were not "supplemental *voir dire*," *id.* at 115, but were a type of proceeding that this Court "has been careful to insulate . . . from unwarranted intrusion by the press and public," *id.* at 116, and which has "traditionally been closed to the public," *id.* at 117. The *Edwards* court's refusal to apply the *Press-Enterprise* standards to "traditionally . . . closed" proceedings does not conflict with the court of appeals' application of those standards here to traditionally open *voir dire* proceedings.

In *In re Greensboro News Co.*, 727 F. 2d 1320 (4th Cir.), *cert. denied*, 469 U.S. 829 (1984), another highly publicized case involving the trial of Ku Klux Klan and Nazi members charged in the shooting deaths of anti-

Klan protesters, the district court closed the *voir dire* to the press and public and sequestered the prospective jurors from each other. The Fourth Circuit upheld the closure of *voir dire* shortly before this Court issued the *Press-Enterprise* decision. Two months later, and after the completion of *voir dire*, the *Greensboro* court explained, in a supplemental opinion, why it "did not . . . regard *Press-Enterprise Co.* as particularly close or relevant to the *Greensboro News Co.* case." 727 F.2d at 1327-28. The court explained that *Press-Enterprise* "concerned a general rule allowing the closing, for reasons of privacy rights protection, of *voir dire*," 727 F.2d at 1328. *Greensboro*, on the other hand, involved "unique" concerns, 727 F.2d at 1328 n.4, including, among other things, the need to relieve 750 prospective jurors of the fear of violent retribution if their *voir dire* testimony revealed strong opposition to the groups involved. 727 F.2d at 1325. The court doubted that any such unique circumstances would arise again. 727 F.2d at 1328 & n.4. Such circumstances differ dramatically from those in the present case.[5]

The only other circuit that has considered a trial court's closure of *voir dire* in light of *Press-Enterprise* has, like the court of appeals below, construed *Press-Enterprise* to bar closure of *voir dire*. *See United States v. Peters*, 754 F.2d 753 (7th Cir. 1985). No conflict exists.

---

[5] Respondents brought *Greensboro* to the attention of the court of appeals, and distinguished it from the instant case. The court of appeals evidently saw no conflict with *Greensboro*.

CONCLUSION

For the foregoing reasons, the petition for certiorari should be denied.

Respectfully submitted,

Of Counsel:

STEVEN KORN
Cable News Network, Inc.
One CNN Center
Box 105366
Atlanta, GA 30348-5366

STEVEN SADICARIO
Capital Cities/ABC, Inc.
1330 Avenue of the Americas
New York, NY 10019

HOWARD JAECKEL
CBS Inc.
51 West 52 Street
New York, NY 10019

ROBERTA BRACKMAN
National Broadcasting Company, Inc.
30 Rockefeller Plaza
New York, NY 10012

TIMOTHY B. DYK
Counsel of Record
MICHAEL STEVENSON
WILMER, CUTLER & PICKERING
2445 M Street, N.W.
Washington, D.C. 20037
(202) 663-6000

Counsel for Respondents
Cable News Network, Inc.,
Capital Cities/ABC, Inc.,
CBS Inc., and
National Broadcasting
Company, Inc.

September 25, 1987

APPENDICES

APPENDIX A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Criminal No. 87-096

UNITED STATES OF AMERICA

v.

MICHAEL K. DEAVER

ORDER

In the exercise of its inherent power to provide for the orderly disposition of this case, it is, by the Court *sua sponte*, this 10th day of July, 1987,

ORDERED, as follows:

1. The press and the public will be admitted to the courtroom during jury selection only to the extent seating may be conveniently available. The transcript of *voir dire* proceedings at the bench and in the jury room, and the prospective jurors' completed questionnaires, will not be released until ordered by the Court after the trial is completed.

2. Any attempt by anyone, without leave of court, to communicate with a member of the jury panel respecting the case prior to selection of a jury, other than in the course of *voir dire*, and any attempt by anyone, without leave of court, to communicate with a member of the jury once selected respecting the case, other than in the course of trial, until the conclusion of the case, may be punished as a criminal contempt of court.

3. During the trial one side of the spectator section of the courtroom will be reserved for the press. If the number of journalists exceeds available seating, priority admission for one representative each will be granted in the following order:

(1) sketch artists (front row only); (2) local daily newspapers; (3) wire services (including affiliated radio networks); (4) non-local daily newspapers within national circulations; (5) local broadcast media; (6) national TV and radio networks; (7) weekly national news magazines; (8) all others. The public will be admitted to the press side of the courtroom only if seating remains available after all journalists have been seated.

4. The other side of the spectator section of the courtroom will be reserved for the general public. Journalists may be admitted to the public side of the courtroom only if seating remains available after all members of the public have been seated.

5. No media interviews whatsoever will be permitted in the courtroom at any time.

6. No members of the press or public will be admitted within the well of the courtroom at any time.

7. The courtroom will be cleared of press and public until 9:45 a.m., for the duration of the noontime recess, and at adjournment. The parties, counsel, and their staffs may be present in the courtroom at any time from 9:00 a.m. until 6:00 p.m.

8. Any violation of the foregoing, and any conduct the Court finds disruptive of the proceedings, may result in an order of temporary or permanent exclusion of the offender(s) from the trial.

/s/ _____

THOMAS PENFIELD JACKSON
U.S. District Judge

APPENDIX B

Partial Transcript of Closed *Voir Dire*
Proceedings, July 14, 1987

Next on my list is Frances Ingram and she has agreed to be questioned in open court.

Next one, 508, Cara Jablon, C A R A, J A B L O N. Number 508.

THE MARSHAL: Your honor, number 507 said can she change her mind, Ms. Ingram.

THE COURT: She wants to testify or she wants to answer questions in the jury room rather than in open court?

THE MARSHAL: When I discovered she was here I directed her to return to the juror's lounge, she said can I stay here, can I change my mind, I didn't go—

THE COURT: I intend to let her change her mind. All right. Before you bring in 508 bring in 507.

MR. SEYMOUR: Do you have questions?

MR. MILLER: Yes.

THE COURT: Please be seated, Ms. Ingram.

THE JUROR: Thank you.

THE COURT: You are very welcome.